

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

East Akron Station
Akron, OH 44305-0098
(Paul J. Connor and Shirley
Strader, Petitioners)
(City of Akron, OH, Intervenor)

Docket No. A2011-16

**OPPOSITION OF UNITED STATES POSTAL SERVICE TO CITY OF AKRON,
OHIO'S MOTION TO EXTEND THE DEADLINE FOR CITY OF AKRON TO
FILE MOTION REQUESTING ORAL ARGUMENT**
(August 15, 2011)

On August 8, 2011, the City of Akron, Ohio (City of Akron) filed a motion to extend the deadline for it to file a motion requesting oral argument ("Motion").¹

The basis of the City of Akron's Motion is that the Postal Service announced the Retail Access Optimization Initiative ("RAO"), which includes the South Arlington Station on the list of Postal Service facilities under consideration for possible discontinuance, and it needs additional time to review the administrative record to cite inconsistencies in support of its Motion to Request Oral Argument.² The Postal Service opposes the City of Akron's Motion because it has had sufficient time to file a motion for oral argument, oral argument is not necessary in a matter that must be decided on the basis of the administrative record, facts regarding RAO are outside of the administrative record, and no determination regarding discontinuance of the South Arlington Station has been made.

¹ City of Akron, Ohio's Motion to Extend the Deadline for City of Akron to File Motion Requesting Oral Argument, PRC Docket No. A2011-16 (August 8, 2011).

² Id. at 2.

In PRC Order No. 733, the Commission set June 20, 2011 as the deadline for participants to file a Form 61 or initial briefs.³ On June 20, 2011, the City of Akron filed a supplemental motion, which was granted, requesting an extension of that deadline.⁴ The procedural schedule was modified as follows⁵:

- Participant's Form 61 or initial brief is due on or before July 11, 2011.
- The Postal Service's answering brief is due on or before July 25, 2011.
- Reply briefs in response to the Postal Service are due on or before August 5, 2011.
- Motions requesting oral argument are due on August 8, 2011.

Pursuant to 39 U.S.C. 404(d)(5), expiration of the Commission's 120-day decisional schedule remained September 8, 2011. On July 27th, the Postal Service filed a request for an advisory opinion to explore whether RAO would conform to the applicable policies of 39 U.S.C. § 3661(b), as implemented by 39 C.F.R. § 3001.72.⁶

The City of Akron has been provided sufficient time to file a motion requesting oral argument and the filing of an advisory opinion related to RAO has not impacted its ability to develop a meaningful motion. The advisory opinion for RAO was filed on July 27th, which was more than 9 days before its reply brief and 12 days before any motion requesting oral argument was due. The City of Akron

³ Commission Order No. 733, Notice and Order Accepting Appeal and Establishing Procedural Schedule, PRC Docket No. A2011-16 (May 16, 2011).

⁴ City of Akron, Ohio's Supplemental Motion to Extend the Deadline for Petitioner and City of Akron, Ohio to File Form 61 and/or an Initial Brief, PRC Docket No. A2011-16 (June 20, 2011).

⁵ Commission Order No. 752, Order Granting Extension and Modifying Procedural Schedule, PRC Docket No. A2011-16 (June 23, 2011).

⁶ Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services, PRC Docket No. N2011-1 at 1 (July 27, 2011).

has already been granted an extension to review the administrative record once, and another opportunity to do so when the administrative record has not changed and the Commission's 120-day decisional schedule cannot change is prejudicial to all parties involved. The deadline which the City of Akron seeks to extend is not for oral argument itself, but for a motion arguing why it is necessary. The City of Akron has not explained why it cannot support its Motion with facts from the administrative record provided on July 17th.

Moreover, even if the Commission were to extend the deadline for the Motion, the advisory opinion related to RAO falls outside of the administrative record. Section 404(d) limits the Commission's review of the closing or consolidation of a Post Office to the administrative record.⁷ The presence of the South Arlington Station on a list of candidates for discontinuance study was not a factor at the time the Postal Service made the decision to discontinue the East Akron Station. Thus, the Commission is prevented from considering this fact now when reviewing whether the Postal Service's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence on the record.⁸

Further, initiation of a feasibility study for the South Arlington Station does not mean that a full discontinuance study will be conducted, or that the facility will

⁷ 39 U.S.C. 404(d)(5). While the Postal Service maintains that the procedures applicable to a Post Office discontinuance do not apply here because this discontinuance action pertains to a station, and not a Post Office, the legal premise on which the Commission bases its assertion of jurisdiction limits the Commission: "The Commission shall review [the Postal Service decision] on the basis of the record before the Postal Service in making [its decision]." *Id.*

⁸ *Id.*

be closed or consolidated; as such, current facts are too tenuous to warrant consideration of this issue as a factor in the discontinuance of the East Akron Station.⁹ RAO seeks to evaluate certain facilities within the postal retail network to determine whether any one or more of them can be discontinued while still maintaining postal facilities of such character and in such locations that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.¹⁰ At this juncture in the RAO proceedings, the Commission has not advised the Postal Service whether it believes this initiative even constitutes a nationwide change in service.

Additionally, the initial discontinuance feasibility studies, at worst, can only lead to a formal study being initiated, where the Postal Service will consider various factors, including the effects on the community and employees, economic savings, the policy in section 101(b) requiring a maximum degree of effective and regular postal services where Post Offices are not self-sustaining, and such other factors as the Postal Service determines are necessary.¹¹ Certainly, the fact that surrounding Post Offices, stations or branches in the area have been discontinued or are being evaluated for possible discontinuance will be considered in analyzing the effects on the community, including those served by the East Akron Station, and the ability to provide a maximum degree of effective

⁹ Assuming the East Akron Station is discontinued, the reverse would not be true: the absence of the East Akron Station means it would not be identified as an alternate location for access to retail services if the South Arlington Station is formally studied.

¹⁰ See Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services, PRC Docket No. N2011-1, at 2-3.

¹¹ 39 U.S.C. 404(d).

and regular postal services where Post Offices are not self-sustaining. However, the Postal Service is nowhere near a stage where these types of decisions can be finalized. In fact, any decision regarding the possible discontinuance of the South Arlington Station and its potential effect on customers of East Akron Station is not ripe for consideration. The Commission has until September 8th to issue its decision in this docket and the Postal Service has advised that no facility discontinuance or service change resulting from the RAO Initiative will be implemented before late December, 2011.¹²

Hence, the Postal Service respectfully requests that the Commission deny the instant Motion and any subsequent motions related to consideration of the RAO initiative in this matter.

Respectfully submitted,

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¹² See Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services, PRC Docket No. N2011-1, at 2.